

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Texas Cable Partners, L.P.
Petitions for Determination of Effective
Competition in Harlingen, Alice, and Certain Other
Texas Communities
CSR 5788 -E & CSR 5790-E

MEMORANDUM OPINION AND ORDER

Adopted: March 29, 2002

Released: April 11, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Texas Cable Partners, L.P. ("Texas Cable") has filed with the Commission two petitions pursuant to Sections 76.7 of the Commission's rules for revocation of the certifications of the Texas communities listed on Attachment A (the "Communities") to regulate basic cable service rates due to the presence of effective competition in those Communities. Texas Cable alleges that its cable systems serving those Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and the Commission's implementing rules, and is therefore exempt from cable rate regulation. More particularly, Texas Cable claims the presence of effective competition in twenty of the twenty three Communities stems from the competing services provided by two unaffiliated direct broadcast satellite ("DBS") providers, Direct TV and DISH Network. Texas Cable claims it is subject to effective competition in these twenty communities under the "competing provider" effective competition test set forth in Section 623(1)(1)(B) of the Communications Act. Texas Cable further claims that it is subject to effective competition in three of the Communities because fewer than 30 percent of the households in these communities subscribe to Texas Cable's cable services. Texas Cable asserts that it is thus subject to effective competition in these three communities under the "low penetration" effective competition test set forth in Section 623(1)(1)(A) of

1See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report Nos. 0018 and 0019, dated October 26 and November 5, 2001, respectively.

2With respect to the cities of Bishop, Donna, Falfurrias, and Mathis, and the towns of Lake City, Lakeside, Palm Village, and Refugio, Texas, which are not certified by the Commission to regulate basic tier cable service rates, (see Petition in File No. CSR 5790-E at 2, n. 1), the petition will be treated as a petition for determination of effective competition pursuant to Sections 76.7 and 76.907.

347 U.S.C. § 543(a).

447 C.F.R. § 76.905(b).

the Act. No oppositions to the petitions were filed.

## II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>6</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>7</sup> Section 623(l) of the Communications Act provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth therein is met.<sup>8</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations.<sup>9</sup>

### A. Application of The "Competing Provider" Effective Competition Test In Twenty Texas Communities

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15%) of the households in the franchise area.<sup>10</sup> Turning to the first prong of this test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>11</sup> Texas Cable has provided evidence of the advertising of DBS service in national media serving the franchise areas.<sup>12</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>13</sup> We find that Texas Cable has demonstrated that the twenty Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise

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<sup>5</sup>47 C.F.R. § 76.906.

<sup>6</sup>See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>7</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>8</sup>See 47 U.S.C. § 543(l)(1)(A)-(D).

<sup>9</sup>See 47 C.F.R. §76.905.

<sup>10</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>11</sup>See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>12</sup>See Petitions at 2-4 and Exhibits A & B.

<sup>13</sup>See 47 C.F.R. § 76.905(g). *See also* Texas Cable Petitions at 5, 7 and Exhibits D. Exhibit D includes channel line-ups for Texas Cable's cable systems serving these communities as well as those of Direct TV and DISH TV.

area. Texas Cable provided information showing that its residential subscribership in the twenty Communities subject to the competing provider test exceeds the aggregate total subscribership of the DBS and other MVPD providers, thus establishing that it is the largest MVPD provider in these twenty Communities.<sup>14</sup>

5. Texas Cable provided 2000 Census data for each of the twenty Communities, from which household numbers for each of the Communities were provided.<sup>15</sup> Texas Cable also provided information showing that in the twenty Communities where it is the largest MVPD, the DBS MPVD providers collectively have attained subscriber penetration levels that range from 15.5 percent in the City of McAllen, Texas, to 36.7 percent in the City of Indian Lake, Texas.<sup>16</sup> Based on this information we find that Texas Cable has satisfied the second prong of the competing provider test in the twenty Communities.

**B. Application of the “Low Penetration” Effective Competition Test in Unincorporated Areas of Three Texas Counties**

6. Another test by which a cable system will be deemed subject to effective competition is if fewer than 30 percent of the households in the systems' franchise area subscribes to the system's service.<sup>17</sup> Texas Cable has provided information showing that, in the unincorporated portions of three counties tested under the low penetration test, the portion of households subscribing to its cable services range from 14.9% in the unincorporated portions of Jim Wells County, Texas, 10.2% in the unincorporated portions of Cameron County, Texas, to 1.7% in the unincorporated portions of Hidalgo County, Texas.<sup>18</sup> Therefore, we find that Texas Cable's cable systems are subject to low penetration effective competition in these three franchise areas.

7. Based on the foregoing, we conclude that Texas Cable has submitted sufficient evidence demonstrating that its cable systems serving the twenty three Texas Communities listed on Attachment A are subject to effective competition.

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<sup>14</sup>Petitions at Exhibits F, G, & H. See Attachment A.

<sup>15</sup>Petitions at 6-9, 8-10 and Exhibits F, G, & H. 2000 Census data satisfy effective competition decision requirements. See *Cable Operators' Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Cable Service Rates*, 9 FCC Rcd 3656 (1994).

<sup>16</sup>*Id.* The penetration rate for each Community is set forth on Attachment A.

<sup>17</sup>See 47 U.S.C § 543(I)(I)(A) & 47 C.F.R. S 76.905(b)(l), which set forth the “low penetration” effective competition test.

<sup>18</sup>Petitions at 4 and Exhibit A. The penetration rate for each Community is set forth on Attachment A.

**III. ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED** that the captioned petitions for revocation of certifications and for determinations of effective competition filed by Texas Cable Partners, L.P. **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service in the cities listed on Attachment A, with the exception of the cities of Bishop, Donna, Falfurrias, and Mathis, and the towns of Lake City, Lakeside, Palm Village, and Refugio, Texas, **ARE REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>19</sup>47 C.F.R. §0.321.

## ATTACHMENT A

## CSR 5788-E &amp; CSR 5790-E

## COMMUNITIES SERVED BY TEXAS CABLE PARTNERS, L. P.

## Competing Provider Test

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households**</b>	<b>Subscribers 50/15 Test TCP**</b>	<b>DBS**</b>
City of Harlingen	TX0169	18.1	19,021	14,034	3,447
City of Alice	TX0008	18.0	6,400	6,105	1,152
City of Bishop	TX0735	28.3	1,132	620	320
City of Donna	TX0167	21.6	4,167	2,458	901
City of Edinburg	TX0168	20.3	14,183	4,915	2,876
City of Falfurias	TX0009	23.3	1,801	1,248	419
Town of Indian Lake	TX1435	36.7	229	144	84
Jim Hogg County	TX0021	15.8	1,815	1,352	286
Town of Lake City	TX1583	18.3	224	121	41
Town of Lakeside	TX1532	22.4	134	90	30
City of Los Fresnos	TX0497	30.9	1,296	745	400
City of Mathis	TX0743	29.8	1,502	989	447
City of McAllen	TX0171	15.5	33,151	15,433	5,125
City of Mercedes	TX0172	20.0	4,170	865	832
City of Mission	TX0173	31.7	13,766	4,887	4,369
Town of Palm Valley	TX0811	29.0	610	492	177
Town of Rancho Viejo	TX1404	21.8	705	602	154
City of Raymondville	TX0175	20.5	2,514	1,247	516
Town of Refugio	TX0757	28.4	1,128	1,105	320
City of Weslaco	TX0179	24.6	8,295	5,324	2,037

\*CPR = Percent DBS penetration rate

\*\*See TCP Petitions at Exhibits E, F, G, & H

## ATTACHMENT A (CONT'D)

## Low Penetration Test

<b>Communities</b>	<b>CUIDS</b>	<b>2000 Census Households</b>	<b>TCP Subscribers</b>	<b>CPR</b>
Cameron County	TX0499, TX0501 TX1935, TX2100 TX2142, TX2144 TX2164, TX2173	20,912	2,136	10.2%
Hidalgo County	TX1408, TX1871 TX2143, TX2163 TX2165, TX2166 TX2167, TX2168	46,350	798	1.7%
Jim Wells County	TX2169, TX2170	4,842	726	14.9%